IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

Bail Appl..No. 4168 of 2007()

CP.95/2006 of J.M.F.C.,NEDUMKANDOM
CRIME NO.314/04 OG NEDUMKANDAM POLICE STATION.

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PETITIONER/ACCUSED NO.3:

SHAJAHAN @ RIYAS,
S/O. MEERAN,
PUTHENPURACKAL HOUSE,
BALAGRAM BHAGAM,
KALLAR P.O.,
KARUNAPURAM VILLAGE,
IDUKKI DISTRICT.

BY ADV. SRI.GRASHIOUS KURIAKOSE
SRI.B.PRAMOD

RESPONDENTS:

STATE OF KERALA,
S.H.O. NEDUMKANDAM,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 4168 OF 2007

Dated this the 3rd day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment for offences punishable, inter alia, under Sec.395 of the IPC. Investigation is complete. Final report has already been filed. The committal court has taken cognizance. As the petitioner was not available, a warrant of arrest has been issued to procure his presence. According to the petitioner, he is innocent. His absence was not wilful. The petitioner, in these circumstances, wants to surrender before the learned Magistrate and seek regular bail. The petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits in accordance with law and expeditiously. It is prayed that directions under Sec.438 and/or 482 of the Cr.P.C. may be issued in favour of the

petitioner.

2. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned

Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself, unless compelling and exceptional reasons are there.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge